

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**SUPPLEMENTAL SHEET
STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 1, 2011
ITEM NUMBER 17 – ATTACHMENT 4
Prepared on August 22, 2011**

This Supplemental Sheet updates the information distributed in the Staff Report for Agenda Item 17 regarding comments received and responses. Attachment 4 of the Staff Report included 35 comment letters and the associated responses. Several additional comment letters, submitted via email by the August 1, 2011 comment deadline, were inadvertently left off the list of comments received and the responses to these comments were not prepared in time to include in the Staff Report.

Table 1A below shows the original list of comment letters received and those staff responded to in Table 2 of Attachment 4 in the Staff Report (Comment Letters #1-35). Table 1B below shows the additional letters (Comment Letters #36-77). Table 2 below shows the responses to Comment Letters #36-77.

Individual comment letters can be viewed on the Water Board's website at the following link:
http://www.waterboards.ca.gov/centralcoast/water_issues/programs/ag_waivers/docs/ag_order/ag_order_comm_letters_nos_01to77_.pdf

Table 1A. Comment Letters 1-35: Individuals and groups that submitted comment letters on the Addendum to Staff Report and Ag Group extra documents

*Individual submittal of standard form letter coordinated by the California Farm Bureau

No.	Commenter(s)	No.	Commenter(s)
1	Best, Best & Krieger LLP	19	French Camp Vineyards*
2	California Dept. of Food and Agriculture	20	General Farm Investment*
3	California Farm Bureau Federation	21	Joel Stinchfield*
4	Clean Water Action, California Strawberry Commission, Environmental Defense Center, Grower-Shipper Association, Monterey Coastkeeper, Monterey County Farm Bureau, Santa Barbara Channelkeeper, Western Growers	22	Kawaguchi Farms*
5	Costa Farms	23	KB Farms LLC*
6	Dragon Spring Farm	24	L.A. Hearne Co.*
7	Environmental Defense Center, Monterey Coastkeeper, Santa Barbara Channelkeeper, San Luis Obispo Coastkeeper	25	Las Vargas and Edwards Ranches*
8	Salinas River Channel Coalition	26	Maria Azevedo*
9	Salinas Valley Chamber of Commerce	27	Neil Bassetti Farms LLC*

No.	Commenter(s)	No.	Commenter(s)
10	Santa Barbara County Farm Bureau	28	Yamanish Farms*
11	Somach Simmons & Dunn	29	Clean Water Action California, Food & Water Watch, Central Coast Alliance United for a Sustainable Economy (CAUSE), San Jerardo Cooperative, Inc., Community Water Center, Environmental Justice Coalition for Water, Santa Lucia Chapter of the Sierra Club, Pacific Institute, Unitarian Universalist Legislative Ministry, CA, Marjorie Kay
12	Dr. John Letey	30	Senator Sam Blakeslee
13	Belli Architectural Group*	31	Best, Best & Krieger LLP
14 15	Bullet Ranches*	32	San Luis Obispo County Farm Bureau
16	Coles Cattle Company*	33	Congressman Sam Farr
17	Doug Turner*	34	Grower Shipper Association of Central CA
18	Frank Costa*	35	Assemblyman Katcho Achadjian

Table 1B. Comment Letters 36-77: Individuals and groups that submitted comment letters on the Addendum to Staff Report and Ag Group extra documents

*Individual submittal of standard form letter coordinated by the California Farm Bureau

No.	Commenter(s)	No.	Commenter(s)
36	Warren Church	57	Darlene Din
37	Webster Vineyard	58	D'Arrigo Bros. Co. of California
38	Babe' Farms, Inc.*	59	Monterey Peninsula Chamber Commerce
39	Bodger Seeds, Ltd*	60	Salinas Valley Water Coalition
40	Colby Rubbo*	61	Salinas Valley Water Coalition
41	Grower Supplies*	62	Salinas Valley Water Coalition
42	Martin Jefferson and Sons*	63	Wayne Gularte
43	Mission Ranches	64	Alice Gripp
44	Olivia Gonzales*	65	State Assemblyman Alejo
45	Rancho San Carlos*	66	State Senator Canella
46	Rio Farms*	67	Central Coast Wetlands Group
47	Santa Barbara County Farm Bureau*	68	Dow AgroSciences
48	Settrini Ranch*	69	Frank M Costa Jr*
49	Steinbeck County Produce*	70	James Steinberg
50	Andy Biancardi*	71	Joel Wiley*
51	Ellwood Ranch Inc.*	72	Nick Huntington
52	Kay Filice	73	RCD of Monterey County
53	Mike Manfre	74	Remediation Testing and Design
54	Monterey County Farm Bureau	75	Salinas Valley Chamber Commerce
55	Paul Kawaguchi	76	UC Cooperative Extension
56	Diana Biddle	77	Western Growers Association

**Table 2. Responses to Comment Letters #36-77 with Comments on:
Draft Agricultural Order No. R3- 2011-0006, Addendum to Staff Report and Ag Group Extra Documents**

Comment ID Similar Comment	Comment	Response
<i>Comments Related to Addendum to Staff Report - Changes to the Draft Order and MRP</i>		
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters:38-42, 44, 45, 47-51, 55)</p> <p>Similar letters: Letter #1 Best Best & Krieger, Letter #3 California Farm Bureau Federation</p>	<p>The Addendum to the Staff Report contains numerous additions and revisions to the Staff's Draft Agricultural Order. The new Ag Order should be based upon the Agricultural Alternative Proposal rather than Staff's Draft Order.</p> <p>Staff added new requirements for prevention of aquifer cross-contamination for groundwater wells.</p>	<p>See response to similar comments in Letters #13-28, California Farm Bureau Form Letter submitted by individual farmers in Attachment 4 to September 1, 2011 Staff Report, page 6.</p>
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters: 38-42, 44, 45, 47-51, 55)</p> <p>Similar Letters: Letter #54 Monterey County Farm Bureau</p>	<p>The new definition to "farm/ranch" is overly broad, speculative, and inappropriate to encompass land where "commercial crops are produced or normally would have been produced."</p>	<p>See response to similar comment in Letter #11 Somach Simmons and Dunn in Attachment 4 to September 1, 2011 Staff Report, page 7.</p>
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters:38-42, 44, 45, 47-51, 55)</p> <p>Similar Letters: Letter #54 Monterey County Farm</p>	<p>The change to the tiering criteria related to acreage and crop types with high potential to discharge nitrogen to groundwater. The new acreage trigger of 50 acres and 500 acres, depending on the tier classification, is not supported by any evidence, is arbitrary, and does not provide enough flexibility for situations unique to agricultural tenant practices.</p>	<p>See response to similar comments in Letters #13-28, California Farm Bureau Form Letter submitted by individual farmers in Attachment 4 to September 1, 2011 Staff Report, page 7.</p>
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters:38-42, 44, 45, 47-51, 55)</p> <p>Similar Letters: Letter #54 Monterey County Farm Bureau</p>	<p>The proposed revisions capture only a small number of the provisions proposed by Farmers. The Order should clarify that Farm Plans are to remain on the farm, and be available to Central Coast Water Board staff upon request at the farm.</p>	<p>See response to similar comment in Letter #11 Somach Simmons and Dunn in Attachment 4 to the September 1, 2011 Staff Report, page 8.</p>
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters:38-42, 44, 45, 47-51, 55)</p>	<p>The Draft Order specifically states "the focus of this Order is non-tile drain discharges. However, new language has been added to specifically require individual monitoring, reporting of management practices, and attainment of water quality</p>	<p>See response to similar comments in Letters #13-28, California Farm Bureau Form Letter submitted by individual farmers in Attachment 4 to September 1, 2011 Staff Report, page 8.</p>

Comment ID Similar Comment	Comment	Response
Similar Letters: Letter #54 Monterey County Farm Bureau	standards for tile drain discharges. These new requirements for tile drains are inconsistent with and contradictory to the very focus of the Order.	
Letter #60 Salinas Valley Water Coalition, West Yost Associates Similar Letters: Letter #62 Salinas Valley Water Coalition, Nancy Isaakson	The Draft Ag Order should be rejected because it is not achievable or scientifically-based.	Comment noted.
Letter #65 Assemblyman Luis A. Alejo Similar Letters: Letter #73 Monterey County Resource Conservation District	Local leaders have expressed to me their concern that there has not been a clear channel of communication...the consequences of developing the Agricultural Order unilaterally, without the contributions of the agricultural industry, are substantial. In March, I urged the RWQCB to support the all community stakeholders' process established under the 2004 Ag Waiver and to further examine the economic implications of the staff draft agricultural order.	See response to similar comment in Letter #30 Sam Blakeslee in Attachment 4 to September 1, 2011 Staff Report, page 12. As described in the staff reports and addendums (for March 17, 2011 Board Meeting and September 1, 2011 Board Meeting), many of the changes are recommended to respond to the agriculturists. Regarding economic implications, see response to similar comment in Letter #5 Costa Farms in Attachment 4 to Item 17, September 1, 2011 Board Meeting Staff Report. .
Letter #68 Dow AgroSciences	1. Commenter disagrees with the prioritization of criteria in the proposed Tiers, the primary focus on chlorpyrifos and diazinon use alone as a criterion, the use of edge of field sampling to	1. The Draft Order tiering approach includes acreage related to production of crops that have higher risk of nitrate loading to groundwater. The Draft Order tiering approach does not

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	<p>predict ecological impacts, the size of the farm operation; number of acres or use of a particular agricultural pest management tool do not necessarily equate to a discharge problem.</p> <p>2. The Draft Order should focus on management of irrigation runoff ; Water Board should coordinate with CA DPR. Water Board should not dictate to a farmer what crop protection chemicals he can use.</p>	<p>relate acreage to chemical use. See also response to comment letters #38-42, 44, 45 etc and #54 on p. 7 related to tiering approach and acreage. The Draft Order does not automatically subject farms that use chlorpyrifos to Tier 3</p> <p>The Draft Order does focus on identified discharge problems. The Draft Order does focus on the fields and drains that actually contribute to drainage problems and impairment. Specifically, the Tier 3 criteria related to chlorpyrifos states the following "Discharger applies chlorpyrifos and diazinon at the farm/ranch, <u>and</u> the farm/ranch <u>discharges</u> irrigation or stormwater runoff to a waterbody <u>listed</u> for toxicity or pesticides on the 2010 List of Impaired Waterbodies".</p> <p>The Draft Order also allows Dischargers to provide specific information to document that the farm/ranch has a lower level of waste discharge or threat to water quality (Condition #17).</p> <p>2. The Draft Order does focus on the management of irrigation runoff. A majority of the Dischargers (Tier 2) primarily have to implement a Farm Plan and report the practices they have implemented to improve water quality. Lower risk, Tier 1 Dischargers, have less reporting. Higher risk, Tier 3 Dischargers, must address specific water quality issues and report specific information to verify progress made, and resulting reductions in discharge and pollutant loading.</p> <p>The Draft Order does not dictate what chemicals a farmer can use. As discussed at the May 4 Board Meeting, staff evaluated the possibility of including additional pesticides in the tiering criteria, and concluded that changes are not recommended at this time and that the related requirements in the Draft Order are protective of water quality and address the concerns related to a farmer shifting pesticides. Specifically the Draft Order includes:</p> <ul style="list-style-type: none"> • Toxicity monitoring in surface receiving water.

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	<p>3. Agriculture cannot meet all water quality standards in such a short time frame (pesticides in two years, sediment in three years) and should not measure water quality criterion at the edge of the field.</p>	<p>(Monitoring for toxicity will generally capture the impacts caused by multiple individual pesticides).</p> <ul style="list-style-type: none"> • The Draft Order MRP also includes individual pesticide monitoring for approximately 50 of the most common agricultural pesticides in surface receiving water. This is, different from the existing cooperative monitoring program for surface receiving water. This will provide the data to identify the detection of and any changes in occurrence in receiving water related to specific individual pesticides. • The Draft Order MRP also requires Toxicity Identification Evaluation studies (TIE) to be conducted when there is persistent unresolved toxicity. This is another improved aspect in the Draft Order MRP, different from the existing cooperative monitoring program. • For the proposed Tier 3 Individual discharge monitoring, the requirements include both toxicity and chlorpyrifos and diazinon. Toxicity monitoring will capture the impacts of individual pesticides not included in monitoring (including from switching chemicals). The Tier 3 MRP also provides the Executive Officer with the authority to add additional pesticides to the individual monitoring, based on pesticide use. This will address concerns related to growers switching chemicals. • The Draft Order also includes an explicit finding which would allow the Board, in the future, to modify the pesticide tiering criteria, if appropriate. <p>3. The Draft Order does not apply water quality standards to discharge at the edge of fields. The Draft Order states the Discharger must implement practices to effectively control discharges to ensure that such discharges do not cause or contribute to the exceedance of any water quality standard (Conditions 9-10). The Water Board will consider multiple factors to evaluate the extent to which the Discharger is effectively controlling discharges, such as management practice implementation, individual discharge monitoring, and receiving water monitoring (Condition #82). See related responses to comments in Appendix E of March 17 Staff</p>

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	<p>4. The Draft Ag Order should be amended to reward and encourage riparian buffer vegetation rather than making it a regulatory requirement and should allow mitigation tools like flocculating agents, such as polyacrylamide (PAM) and degradative enzymes such as Landguard,TM that can reduce chlorpyrifos levels in irrigation water run-off.</p>	<p>Report.</p> <p>4. The Draft Order provides incentives to Dischargers that implement effective practices to improve water quality. For example, the Draft Order states that vineyards that implement sustainable practices, such as riparian buffers, verified by the Sustainable in Practice (SIP) certification qualify for the lowest tier (Condition #14.1.d). In addition, Dischargers can provide information to the Executive Officer to demonstrate a lower level of waste discharge to be considered for a lower tier. Condition #17 lists the types of information a Discharger must provide for this purpose. In cases where management practice implementation results in a lower level of waste, the Discharger can provide information about the discharge and any reductions in pollutant loading. Dischargers that provide this type of information would be considered for a lower Tier.</p> <p>The Draft Order includes a requirement to develop a Water Quality Buffer Plan. The purpose of the plan is to control discharges of waste in compliance with the order and Basin Plan. The Draft Order allows alternatives to the requirement to develop a Water Quality Buffer Plan, including documentation of practices that sufficiently treat or control the discharge.</p>
<p>Letter #73 Monterey County Resource Conservation District</p>	<p>The Draft Order's goals and timelines for water quality improvement are unachievable.</p>	<p>See response to Letter # 68, comment 3 above.</p>
<p>Letter #76 UC Cooperative Extension</p>	<p>Commenter agrees with Draft Order changes to encourage greater irrigation and nitrogen use efficiency over time to improve water quality.</p> <p>Commenter also recommends Draft Order include provision for the growers of "at risk" crops that are in Tier III to have an avenue to a lower level of regulation (e.g. Tier II) if they can show that they are achieving the goals set forth by the Agricultural Order.</p>	<p>Comment noted.</p> <p>Per Condition #17 in the Draft Order, Dischargers may provide information to the Executive Officer to demonstrate a lower level of waste discharge to be considered for a lower tier. Condition #17 lists the types of information a Discharger must provide for this purpose, including fertilizer application information. As presented by staff at the May 4, 2011 Board</p>

Comment ID Similar Comment	Comment	Response
		Meeting, Dischargers can provide fertilizer application information to document that they meet the nutrient balance ratio targets identified in the Order (e.g., 1.2 for strawberries) demonstrating that they apply a reasonable amount of nitrogen and would be lower-risk for pollutant loading to groundwater. Dischargers that provide this type of information would be considered for a lower Tier.
Letter #77 Western Growers	The requirements for construction and maintenance of containment structures for groundwater protection is problematic. Individual monitoring is not necessary and is included to focus on enforcement.	See responses to similar comments to California Farm Bureau Form Letter submitted by individual farmers (Letters:38-42, 44, 45, 47-51, 55) above and in Attachment 4 of September 1 Staff Report.
Comments Related to Addendum to Staff Report- Staff's Evaluation of the Agricultural Alternative Proposal and Ag Group Extra Documents		
California Farm Bureau Form Letter submitted by individual farmers (Letters: 38-42, 44, 45, 47-51, 55) Similar Letters: Letter #53 Mike Manfre, Letter #54 Monterey County Farm Bureau, Letter #55 Paul Kawaguchi, Letter #58 Stephen de Lorimier, Letter #63 Wayne Gulare, Letter #70 James Steinberg, Letter#77 Western Growers	The Addendum to the Staff Report does not provide an objective review, contrast, or comparison of the Agricultural Alternative Proposal to Staff's Draft Agricultural Order as directed by the Central Coast Regional Water Quality Control Board. The analysis of the Agricultural Alternative Proposal contains numerous substantive flaws, misstatements, and incorrect assumptions leading to inaccurate and deleterious conclusions. Contrary to Staff's conclusions, the Agricultural Alternative Proposal is enforceable; contains a legally consistent approach for the use of third-party groups; provides accountability; will control waste discharges from irrigated agriculture; provides flexibility; and includes adequate surface water and groundwater monitoring components.	See response to similar comment in Letters #13-28, California Farm Bureau Form Letter submitted by individual farmers in Attachment 4 of September 1 Staff Report.
Letter #41 Joel Wiley Similar letters: Letter # 43 Mission Ranches, Letter #52 Kay Filice, Letter #55 Paul Kawaguchi	Education, best management practices, and collaborative Ag Alternative Proposal will move us forward to bringing an improvement to water quality.	Comment noted.

Comment ID Similar Comment	Comment	Response
<p>Letter #54 Monterey County Farm Bureau</p> <p>Similar Letters: Letter #73 Monterey County Resource Conservation District</p>	<p>Staff's conclusion that the Ag Alternative is a lesser degree of regulation is unsupported.</p> <p>Milestones that were included in the December Ag Alternative remain in effect in the May Ag Alternative; staff mischaracterized the conversation in the Addendum to the Staff Report.</p> <p>Staff criticized the timing for not meeting conditions of the Ag proposal. Best management practices take time to implement and evaluate....</p>	<p>Staff disagrees with these comments as already described in the Addendum to the Staff Report.</p> <p>Regarding the degree of regulation, the Ag Proposal does include a different, less stringent standard of compliance than the 2004 Ag Order and in other ways is less stringent. For example, proposing "working toward" compliance as a standard.</p> <p>Regarding management practices, staff has assumed that many farmers in the region have been implementing management practices to meet conditions of the 2004 Conditional Waiver for the past seven years. From this perspective, staff finds it reasonable to include the timeframes in the Draft Agricultural Order to demonstrate progress towards effective implementation to reduce pollution loading and control discharges of agricultural runoff. Staff has seen evidence of some farmers successfully implementing management practices and demonstrating effectiveness within the timeframes proposed in the Draft Ag Order, as discussed in the Addendum to the Staff Report.</p>
<p>Letter #66 Senator Anthony Cannella</p> <p>Similar Letters: Letter #73 Monterey County Resource Conservation District</p>	<p>The analysis of the Ag Alternative is loaded with inaccurate assumptions and conclusion. Moreover, it fails to address many of the comments raised at the public hearing...</p> <p>Working collaboratively to integrate industry expertise and best practices will result in far superior outcomes and compliance than the isolated and heavy-handed approach which staff continues to espouse.</p>	<p>See response to similar comments in Letters #13-28, California Farm Bureau Form Letter submitted by individual farmers in Attachment 4 to September 1, 2011 Staff Report, page 13.</p> <p>Staff met with technical service providers and other industry experts, including nutrient and irrigation management specialists from UC Extension and certified crop advisors. Some of these professionals participated in technical work groups with our staff to develop implementation actions, methods to measure and track improvements, and targets to indicate progress. See Comment Letter #76 indicating UC Extension support for some of the conditions in the Draft Ag Order.</p> <p>The Draft Ag Order requirements are a result of integrating industry expertise and best practices and were not developed in isolation. The Draft Ag Order requires both</p>

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		implementation of actions on the ground or “best practices” and reporting to demonstrate that those actions are effectively reducing pollution loading and controlling agricultural discharges (developed with input from industry experts).
Letter #74 Howard Whitney, Remediation Testing and Design, Inc.	<p>We have reviewed the documents and encourage the Board to adopt the Draft Order as written. The reports show detailed care and consideration of the proposal by the Farm Bureau. The staff report clearly shows that it is impossible to satisfy both the Farm Bureau and the Water Code.</p> <p>The last two revisions to the Order have reduced the regulatory requirements beyond what is reasonable given that agricultural discharges are responsible for widespread water quality pollution and nuisance throughout the Central Coast Region. However, the Board should not allow the pursuit of a perfect Order to obstruct common sense water quality improvements.</p>	<p>Comment noted.</p> <p>Staff agrees that it is time to put requirements in place to address the water quality problems and that these problems have persisted and will continue to persist until an Order is adopted that requires and focuses water quality improvement efforts.</p>
Letter #75 Salinas Valley Chamber of Commerce Addendum Similar Letters: Letter#77 Western Growers	<p>The Draft Order will place greater economic burden on farmers than the Agricultural Alternative Proposal.</p> <p>The cost per acre of the Agricultural Alternative is much less than the cost per acre of the Draft Ag Order.</p>	See response to similar comment in Letter #5 Costa Farms in Attachment 4 to the September 1, 2011 Staff Report.
Comments Related to Addendum to Staff Report- Legal Issues		
Letter #57 Darlene Din Similar Letters: Letter #77 Western Growers	<p>Commenter refers to “the crux” of the disagreement between the Water Board and irrigated Ag as reporting [Draft Ag Order] versus actions on the ground [Ag Alternative Proposal].</p> <p>The Staff Report’s evaluation misconstrues the use of third-party groups/coalitions as proposed by the Ag Alternative Proposal.</p>	<p>The Draft Ag Order requires both implementation of actions on the ground and reporting to demonstrate that those actions are effectively reducing pollution loading and controlling agricultural discharges. This comment misrepresents the conditions in the Draft Ag Order, which focus on actions to improve water quality.</p> <p>Regarding third-party groups, see responses to similar comments in Letter #3 California Farm Bureau Federation in Attachment 4 to the September 1, 2011 Staff Report.</p>

Comment ID Similar Comment	Comment	Response
<p>Letter #61 Salinas Valley Water Coalition, Horan, Lloyd, Karachale, Dyer, Schwartz, Law & Cook</p> <p>Similar Letters: Letter #62 Salinas Valley Water Coalition, Nancy Isaakson</p>	<p>The Order arbitrarily classifies farms into Tiers based on location rather than where high pollutant loading has been identified.</p> <p>The Order oversteps the Board's authority to regulate groundwater.</p> <p>The Order inappropriately expands the irrigated agricultural lands regulations to address stormwater discharges which are already covered by Municipal National Pollution Discharge Elimination System Permits.</p> <p>The Order includes duplicative regulations for wetlands and riparian habitats.</p> <p>The Final Supplemental Environmental Impact Report does not account for loss of farm lands to riparian buffers.</p> <p>The Order fails to protect trade secrets.</p>	<p>See responses to similar comments in Appendix E of the March 17 Staff Report and Attachment 4 to the September 1 Staff Report.</p>
<p>California Farm Bureau Form Letter submitted by individual farmers (Letters: 38-42, 44, 45, 47-51, 55)</p> <p>Similar Letters: Letter #54 Monterey County Farm Bureau</p>	<p>Clarify reporting requirements relative to proprietary information such as trade secrets and secret processes. While the proposed revision will clarify the process for submitting information, it does not provide the growers with any protection for confidential information. Further, the proposed revision would now require every grower to provide "adequate legal justification" for protecting information from public disclosure.</p> <p>This shifts the burden of proof to the discharger.</p>	<p>See response to comment on similar issue in Letter #11 Somach Simmons and Dunn in Attachment 4 to September 1, 2011 Staff Report.</p>